

Dear Ms. Semo,

I am seeking formal mediation directly with the Department of Navy Judge Advocate General (DON JAG) Code 14, Nathan Bosiak or S.D. Schrock. Navy's FOIA public liaison Christopher Julka has unlawfully refused to respond to my 11/21/2020 9:26 PM request for dispute resolution below.

The matters herein, particularly regarding **FOIAonline** are of great public interest and interest to the FOIA Advisory Committee.

In the past couple of weeks DON JAG sent me some 50 appellate determinations to 2017 – 2019 appeals, nearly all unnecessarily/improperly only sent via DOD Safe drop box with a seven-day retrieval limitation, even though I was at Disney with my family and told DOD to cease and desist. I am addressing the first of some 50.

In a February 26, 2023 letter S.D. Schrock responded to my January 19, 2019 administrative appeal DON-NAVY-2019-002977 (Appeal of FOIA Request DONFOIA-PA-1. Case Records of Appeal of FOIA Request DON 18-BD4, DONFOIA-PA Assigned Agency FOIA Case Number DON-NAVY-2018- 011904). Those matters are all subject to mediation.

DOD.

The matters herein are now ripe for litigation and review in various venues. All DOD addresses, please preserve records. I have offered numerous times to resolve DOD matters globally, quietly, within DOD. That offer stands, however continued DOD misconduct makes matters worse.

**FOIAonline. FOIA Advisory Committee.**

**Ms. Laura Johnson (pls investigate all FOIAonline issues and advise).**

1. S.D. Schrock in his appellate determination "Hammond DON-NAVY-2019-002977 signed highlighted" at footnote 5 states.

"Please be advised that the full appeal that you submitted via attachment on FOIA Online was inaccessible. As a result, I am only able to consider your bases on appeal that are clearly discernable."

S.D. Schrock's statement appears to be a materially false statement, as I downloaded all files from FOIAonline at 1000 on March 3, 2023, which I am attaching as a zip file, "DON-NAVY-2019-002977 Supporting Files."

How one can adjudicate an appeal without the files is a mystery and legally insufficient in my view.

2. Between January 2, 2013 and February 3, 2023 seventy-one (71) of my two hundred sixty-two (262) Navy FOIA cases from 2017 forward have been deleted from

FOIAonline or I have been denied access to them. This is extremely serious. EPA must determine who did this, how it happened, and if this is unique to me. *See* “FOIAonline Compare January 2, 2023 to February 3, 2023 Missing Cases Navy.”

3. In Ms. Johnson’s March 2, 2023 presentation to the FOIA advisory Committee, Ms. Johnson stated:

“What happens to the data keep in mind that the partner is the custodian of their data they give us the authority to migrate their data that partner's data will live on at a different location to close the loop on our responsibility of the partners FOIAonline data we will protect and secure our copy of the departing Partners data until its ultimate demise when we dismantle the FOIAonline platform.”

What does “**dismantle the FOIAonline platform**” mean?

I disagree with EPA’s assessment of EPA’s mandatory, legal requirement to preserve the unique FOIAonline case records per NARA GRS 4.2 Item 20 (which is 6+ years, but as identified here if a requester seeks case processing records for an earlier case (which is very common), the earlier case retention is extended for another 6+years (litigation also applies).

EPA must only be in legal “Possession, Custody, or Control.” These original, unique workflows and case processing records, which the requester cannot download, were created within FOIAonline. All three “Possession, Custody, or Control” apply to FOIAonline records in EPA’s database, which must be preserved.

4. In his February 26, 2023 letter S.D. Schrock further states that:

“your January 19, 2019 FOIA appeal, which was submitted to the Secretary of the Navy/Chief of Naval Operations FOIA Office (DNS-36) and assigned tracking number DON-NAVY-2019-002977. DNS-36 forwarded your appeal to this office on January 22, 2019.”

Again, this appears to be a materially false statement which may affect FOIA reporting. I submitted my FOIA appeal directly to DON JAG on January 19, 2019. FOIAonline documents this, “Agency OJAG – 14.”

(The fact that the Secretary of the Navy/Chief of Naval Operations FOIA Office (DNS-36) personally reviews every request and appeal that I submit is problematic in itself. DNS-36 usurps requests that I submit directly to Navy components for records in their custody where the records are located, then DNS searches its records and states DNS-36 does not have the records. DNS-36 has also combined every request I have ever submitted for the purpose of fee determinations, which is patently illegal.”)

### **Other Mediation Issues.**

In addition to all the above, the following are subject to mediation.

1. **Fees. Navy aggregating every FOIA request I ever submitted since 2013 for fee determination.** By letter of October 18, 2018, DONFOIA-PA states:

“Over the past five years, you have submitted over 200 Freedom of Information Act requests to this office and the FOIA offices of various DoN subcomponents. The majority of these requests have concerned matters related to the conduct of DON FOIA activities - to include reporting practices, processing of FOIA requests, and personnel documents of various FOIA personnel - and have been processed by DON FOIA activities without charging search or duplication fees. Primarily, fees have not been charged because for each request you received two hours of search time and 100 pages of duplication without charge. This letter is to advise you that all future FOIA requests for documents concerning the conduct of DON FOIA activities will be aggregated by this office for purposes of assessing fees.”

2. **Fes Navy attempting to charge me \$240 for review time when I am a private requester.** No review time is authorized. Also, countless other entities produced records to nearly identical requests for free. DON JAG agreed that fees are improper but did not remand my FOIA request. *See* Enclosure 1, Letter Ser DNS-36MJ 18U105033 dtd October 25, 2019 fee determination.
3. **HIPAA & Privacy Act Violation.** LCDR Yost, a Department of the Navy Judge Advocate General Officer, failed to “encrypt and decrypt ePHI in accordance with DoD and MHS policy, and taking into account requirements to protect data at rest and in transit, using approved cryptographic modules.” This exposed my medical record data clearly marked HIPAA and cited as Privacy Act data by Walter Reed.
4. **DONFOIA-PA Office refused to accept USINDOPACOM’s referral** request for records which are incontrovertibly in DONFOIA-PA’s possession.
5. **Refusal to remand.** DON JAG (while agreeing that the agency’s denial under fees was improper) refused to remand my request stating, “However, after a review of your request, I independently find that your request was improper under the FOIA as it is overly broad.” DON JAG did this in coordination with DON FOIA-PA. S.D. Schrock’s feigned confusion about Enclosures 1 and 2 is ludicrous. My request DON-NAVY-2018-

011904 clearly identifies Enclosures 1 and 2 in the body of the request at page 12 of 13 as:

Enclosures:

1. Hammond e-mail Thread September 22, 2018
2. Appeal of FOIA Request DON 18-BD4, USINDOPACOM

I am including my underlying FOIA request DON-NAVY-2018- 011904. My entire request is a contiguous 60-page document. The fact that Enclosure 2 cited in my request “Appeal of FOIA Request DON 18-BD4, USINDOPACOM“ contains subordinate enclosures does not create the feigned confusion that S.D. Schrock purports as the basis for denying my request as overly broad.

Also, within my FOIA request DON-NAVY-2018- 011904 there are countless examples of Navy and Defense Health Agency false reporting and other misconduct subject to mediation.

6. **Untimely response.** The Agency failed to respond to DON-NAVY-2018- 011904 within the statutory 20 working-day time standard and failing that also failed to provide the statutory notifications.
7. **No OGIS or FPL rights.** The Agency failed to advise me of “the right of such person to seek dispute resolution services from the FOIA Public Liaison of the agency or the Office of Government Information Services.” DON-NAVY-2018- 011904.
8. **Withholding records.** The Agency failed to return a copy of my FOIA Request in their initial determination, which is clearly a record in their possession specifically sought by my DON-NAVY-2018- 011904.
9. **Estimated Completion Dates.** DON-NAVY-2019-002977 Navy has refused to provide me estimated completion dates to my requests and appeals (including purported closure dates where applicable) and has not engaged in OGIS mediation of that matter

With my deep respect,

Robert Hammond

Attachments:

- Zip File “DON-NAVY-2019-002977 Supporting Files”
- Zip File “DON-NAVY-2018-011904 Supporting Files (1)”
- FOIAonline Compare January 2, 2023 to February 3, 2023 Missing Cases Navy